



Service Specific Enforcement Policy

Regulatory Services and Health

To be read in conjunction with the Cheshire East Council
Enforcement Policy

November 2022

CHESHIRE EAST BOROUGH COUNCIL

REGULATORY SERVICES & HEALTH ENFORCEMENT POLICY

1. Aims of this Policy

- 1.1 To advise and inform businesses and individuals with regards to the legislative powers available to the Regulatory Services & Health (RS&H) team and how and when those controls will be executed.
- 1.2 This policy must be read in conjunction with the Cheshire East Corporate Enforcement Policy which provides details of the overarching approach taken by Cheshire East in its enforcement duties.

2. Functions of Regulatory Services and Health

- 2.1 The Regulatory Services & Health (RS&H) team sits within the Environment and Neighbourhoods department of the Place Directorate and includes the following teams;
 - Commercial Services
 - Environmental Protection
 - Licensing
 - Animal Health and Welfare
 - Trading Standards
 - Financial Investigations
 - CCTV

3. Working With Other Agencies

- 3.1 RS&H undertakes a wide range of functions across the whole of Cheshire East and works with a number of internal and external partners to provide a holistic approach to enforcement. Where issues are identified that extend beyond the remit of one agency and into the role of another, then joint operations will be considered to maximise resources and improve any enforcement outcomes.
- 3.2 We will refer matters to other enforcement agencies where we believe they are the most appropriate to deal with the matter. Similarly, we will also accept referrals from others where we believe we are the most appropriate enforcement agency to deal with the issue effectively.

4. Our Approach to Enforcement

- 4.1 RS&H possesses various powers and duties to deal with actual or potential breaches of legislation. In other words, although there are many things that the service must do, there are also many others which it may do only if it wishes to. Where this discretion is available then the service will consider a number of wider factors to determine its most appropriate regulatory approach. Further information on these guiding principles, can be found in Section 3.0 of the Cheshire East Corporate Enforcement Policy.

- 4.2 In addition to the range of legislation available to the team we also consider national guidance and Codes of Practice when determining the most appropriate way to remedy a problem.
- 4.3 Enforcement action should not normally be considered as an initial remedy for any contraventions and where possible officers should consider informal action in the first instance having regard to the 4 E's approach; Engage, Educate, Encourage and Enforce only when there are persistent breaches or a failure to cooperate. However, there are occasions when, depending upon the severity of the contravention, formal action will be considered as the initial and most appropriate course of action.

5. General Service Standards

- 5.1 RS&H aims to respond to all requests for service, complaints or information received and to conduct any investigation efficiently and as quickly as possible. Despite this, due to the complexity of some of the work, it is possible for investigations to take a considerable amount of time to enable a thorough investigation to be carried out. In these circumstances officers will, where possible, keep all parties updated on progress.

6. Legislative Framework

- 6.1 RS&H has a wide range of powers contained within primary and secondary legislation. This is supported by statutory and non-statutory guidance, which help with interpretation and implementation. Where guidance exists, this will be followed unless there are good reasons to depart from it.
- 6.2 In some instances, specific powers contained within legislation are restricted to competent officers who are deemed to have the relevant qualification, skills and experience to enforce them. These specific delegations are formally recorded by the service within the Local Scheme of Delegation (LSOD).

7. How to Make a Report to Regulatory Services and Health

- 7.1 Before making direct contact with Regulatory Services and Health, individuals and businesses are encouraged to visit the Cheshire East webpages for initial information and advice www.cheshireeast.gov.uk. On some webpages, online forms exist which can be used by an individual or business to raise a specific concern directly with the service.

7.2 For Environmental Protection, Pest Control, Food Safety, Health & Safety, Licensing, Animal Health & Welfare

Reports can be made online at www.cheshireeast.gov.uk or the Customer Contact Centre on 0300 123 5015.

7.3 For Trading Standards

The government gave Citizens Advice the responsibility to provide consumer advice to the public, this is not a service commissioned by the Council directly and Citizens Advice is a wholly separate organisation.

The Citizens Advice Consumer Service (CACS) is government funded and the scope of the service is to provide free, impartial advice and information on contracts for goods and services, before, during and after purchase, including legislation or industry regulations and practical guidance. CACS provides initial advice to consumers and decides on notification or referral routes to Trading Standards.

Trading Standards will consider all **referrals** received from CACS; although this does not mean that contact will be made with complainants. Trading Standards will only seek to make further enquiries or start an investigation where there has been persistent and/or serious criminal activities and civil law breaches and in line with our Enforcement Policy.

Trading Standards do not routinely consider the **notifications** received from CACS. Instead, notifications may be considered in instances such as but not limited to:

- As part of enquiries following a decision to instigate an investigation.
- For the development of intelligence in order to direct the service objectives.

CACS can be contacted on 03454 040506 or by visiting www.citizensadvice.org.uk/consumer/get-more-help

7.4 Businesses seeking help and advice on Trading Standards matters can use the dedicated Cheshire East webpages www.cheshireeast.gov.uk which contains a wide variety of information. The webpage also provides contact details for the team if further help is required.

7.5 In all cases, written communications can be sent to Regulatory Services and Health, Municipal Buildings, Earle Street, Crewe CW1 2BJ.

7.6 **Anonymous Complaints**

There are circumstances where customer details are required to enable a full investigation to take place. Whilst officers shall ensure customers details are kept confidential, there are occasions when individuals wish to remain anonymous from the outset of the complaint. In these situations, officers will use professional judgement to determine if the service request or information can be actioned in the absence of customer information.

8. **Power of Entry**

8.1 Where legislation grants officers the power to enter premises to carry out specific functions, this will be undertaken in accordance with the requirements of relevant legislation.

8.2 Where a warrant is required from the Magistrates' Court, an application will be made in accordance with the Council's procedures and the requirements set out by the Magistrates' Court.

9. Enforcement Actions

The table below provides a brief description of the main enforcement actions available to the RS&H Team. This should be read in conjunction with the Cheshire East Corporate Enforcement Policy.

Enforcement Action	Description
Promotion	This typically involves a push of information to residents and businesses about specific matters of legislation. This can be achieved by a variety of methods including, but not limited to direct correspondence, press releases, face to face contact and website information.
Compliance Advice, Guidance and Support	RS&H uses compliance advice, guidance and support as a first response and in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of an informal warning letter to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible and avoiding the need for any formal enforcement action. However, where a similar breach is identified in the future, this previous advice will be persuasive in considering the most appropriate enforcement action to take in response to the current situation being investigated.
Warnings	Warnings are used for low-level breaches of legislation and where there is a low risk of harm to health, safety or the environment. They can be either verbal or written, but where a verbal warning is given, it will be confirmed in writing either with an inspection record left at the time of the visit or by a subsequent letter. When a warning is issued by RS&H, it may be followed up by a further visit or inspection to ensure the problem has been rectified.
Written Undertakings (Voluntary and Formal)	Where an individual or organisation persistently fails to comply with the law, RS&H may seek a written undertaking from that person that they will cease the action causing the breach. Failure by an individual or business to agree to a written undertaking, or in cases where an agreement is breached, can lead to further formal action being taken as appropriate.
Fixed Penalty Notice	Certain lower level offences, where legislation allows, can be dealt with by means of a Fixed Penalty Notice which allows the offender to discharge their liability and avoid a criminal record. RS&H will comply with any current relevant guidance on the use of Fixed Penalty Notices. Where an adult recipient does not pay the penalty offered or is a repeat offender there will be a presumption that prosecution will follow in relation to the actual offence committed.
Formal Notices	Where a breach is either causing, or likely to cause serious harm to health, the environment or safety, a formal notice may be issued to all parties concerned and can include the owner(s) of the premises. A formal notice will require a

Enforcement Action	Description
	<p>person, business or organisation to comply with specific legal requirements within a specified time period. A notice shall explain the legislation that has been breached, how to comply with the notice and the consequences of not complying with a notice. Notices will be accompanied by any relevant appeal information.</p> <p>In general, failure to comply with a notice makes those named in the notice liable for prosecution action in the Courts.</p>
Variation/Review of Permits and Licences	<p>Following the issue of a licence or permit the Council may review the conditions of that licence having regard to any legislative procedures that govern a review process.</p>
Suspension/Revocation of Permits or Licences	<p>Where a permit or licence has been issued and where continued or serious breaches occur, the Council will consider suspending/revoking the licence. This action may run in parallel with other available enforcement options.</p> <p>With regards to taxi licensing a licence may be suspended by officers or a sub-committee depending on the circumstances.</p>
Seizure and Suspension Proceedings	<p>Certain legislation enables authorised officers to seize or suspend goods, for example, unsafe food, unsafe products, noise making equipment or any goods or documents that may be required as evidence for possible future court proceedings.</p> <p>In some instances, storage of seized goods may incur a charge which will need to be paid before release and return of items.</p>
Forfeiture Proceedings	<p>This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them from re-entering the marketplace or being used to cause a further problem. RS&H may seek an order of the court for forfeiture of goods it has seized either as part of criminal investigations or during the exercise of its enforcement functions.</p>
Works in Default	<p>Where a formal notice has not been complied with and it is in the public interest to undertake the work to ensure that risks to health, safety or the environment are prevented, the Council can undertake the necessary works to achieve compliance with the requirements of the notice. In some circumstances, the Council may decide to undertake the work in default and also instigate prosecution proceedings. The Council can recover any costs incurred in undertaking Works in Default from the individual or business responsible for the breach of legislation.</p>
Closure of Premises	<p>In situations where there is an imminent risk to the health or safety of the public or the environment, the Council may apply to the Courts to close a premises.</p>

Enforcement Action	Description
Caution	Where appropriate, consideration will be given to offering a Caution to a person, where they admit culpability for the offence, rather than taking a prosecution through the Courts. Therefore, a Caution will be considered in those instances where the Council is satisfied that there is sufficient evidence to offer a realistic prospect of conviction. A Caution is not a criminal conviction, but it will form part of an offenders criminal proceedings and may be referred to in any subsequent proceedings.
Financial Penalties	Where legislation permits, the Council will consider whether to impose a financial penalty within the limits set by specific legislation. This would be as an alternative to prosecution.
Prosecution	The Council will consider commencing prosecution proceedings in the Courts against any individual or business who fails to comply with the requirements of a formal Notice or in those cases where the legislation allows for this without the service of an initial formal Notice. Before commencing legal proceedings, the Council will ensure it is satisfied there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest. The Council will use discretion in deciding to initiate a prosecution and may do so without prior warning taking place.
Injunction/Enforcement Order	Where a formal Notice has not been complied with and a prosecution is not considered expedient or, previous prosecution(s) have failed to secure compliance, the Council will consider applying to the Court for an Injunction. Such action will only be considered if the breach is likely to continue. In certain circumstances RS&H may consider it necessary or expedient to seek a direction from the court (in the form of an order or injunction) to control behaviour or activity.
Proceeds of Crime	There are some cases where an application under the Proceeds of Crime Act is considered appropriate. This seeks to confiscate assets from an offender in order to recover the financial benefit they have gained during the course of their criminal activities. Where such an approach is considered appropriate an Accredited Financial Investigator will commence a parallel financial investigation. Any subsequent confiscation must be made after conviction but prior to any sentencing.

10. Naming Offenders

- 10.1 The names and addresses of individuals or businesses who act in ways that represent significant harm or risk, particularly to the young and vulnerable or against the interest of legitimate businesses may be published. This action may be taken in circumstances where:

- Evidence of unfair, dishonest or illegal trading is conclusive.
- It is in the public interest to do so.
- There is no risk of prejudicing legal proceedings or other formal enforcement action.
- To do so does not breach Human Rights or Data Protection law.
- Prosecution proceedings have concluded.

10.2 The service is also bound by the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. This means that where the council receives specific requests for information, for example inspection reports relating to business premises, then it is required to release them unless there are specific circumstances which exempt release.

11. Appeals

11.1 There is a statutory right of appeal against the Council's decision to issue a formal Notice. The period for submission of the appeal is set by legislation and all notices will contain information relating to the appeal provisions.

11.2 Unless otherwise stated in the formal Notice, where an appeal is lodged with the Courts, the requirements of the Notice will be held in abeyance until the appeal has been determined.

11.3 In addition to formal Notices other enforcement decisions made by the Council, can be challenged through an appeals process. Where an appeal is available, information relating to any process and procedures will be provided with notification of the decision.

12. Works in Default – Cost Recovery

12.1 The Council has the power to carry out works in default for certain Notices and recover all reasonable costs incurred from any person(s) responsible for a failure to comply with requirements. It is not necessary for the Council to have exhausted all other avenues, e.g., prosecution, before a decision is taken to carry out works in default.

12.2 Where it is considered reasonable and proportionate, the Council will carry out works in default and seek to recover all costs incurred either directly from the owner/occupier or by placing a registered charge on the land. Ultimately, the Council may seek to use its powers to force the sale of land to recover its costs.

13. Verbal/Physical Abuse Towards Officers

13.1 The Council is committed to ensuring that its officers are able to carry out their work safely and without fear and, where appropriate, will use legal action to prevent abuse, harassment or assault towards officers. To obstruct an officer in carrying out their duties is an offence and legal action may be taken against any person(s) doing so.

13.2 Officers are entitled, if subjected to verbal abuse either in person or on the telephone, to terminate the meeting or telephone call.

14. Complaints and Compliments about the service

14.1 In accordance with the Council's Compliments, Suggestions and Complaints procedure, persons wishing to make a complaint or compliment about the Regulatory Services and Health service can do so using a number of means:

- Using any contact information provided as part of formal correspondence issued by the service;
- By telephoning our customer contact centre on 0300 123 5500;
- In writing to Cheshire East Borough Council, Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ; or
- Online at [Customer feedback, compliments and complaints \(cheshireeast.gov.uk\)](https://www.cheshireeast.gov.uk/customer-feedback-compliments-and-complaints)

14.2 If the complainant has exhausted the Council's corporate complaint process without satisfaction, they can complain to the Local Government Ombudsman. Advice about the types of complaint the Local Government Ombudsman can investigate, as well as application forms for such complaints can be found at the following web site, www.lgo.org.uk. Application forms for such complaints are also available on request at Cheshire East Borough Council offices.

14.3 The Office of Environmental Protection (OEP) was created in November 2021 under the Environment Act 2021. The mission of the OEP is to protect and improve the environment by holding government and public authorities to account. As part of their work they can receive complaints, conduct investigations and commencing legal procedures if warranted. For more information on the OEP and their remit please visit their website www.theoep.org.uk

15. Policy Review

15.1 This policy will be subject to a general review every three years. Where significant changes are required i.e., if there is a significant change to our enforcement approach then those changes will be subject to the formal approval process in place at that time.